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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CIVIL APPLICATION NO.11947 OF 2015
WITH
CIVIL APPLICATION NO.11949 OF 2015
IN
SECOND APPEAL (ST) NO.26374 OF 2015**

1. Vikas s/o Uttam Hake,
Age: 24 years, Occ: Agri.,
& Business, R/o. SBH Colony,
Ambajogai Road, Latur.
2. Shilpa d/o Uttam Hake,
Age: 20 years, Occ: Nil,
R/o. As above.
3. Akash s/o Uttam Hake,
Age: 19 years, Occ: Nil,
R/o. As above.
4. Sunita w/o Uttam Hake,
Age: 46 years, Occ: Nil,
R/o. As above. ..APPLICANTS/APPELLANTS

VERSUS

1. Manjula w/o Mahadu Hake,
Age: 71 years, Occ: Nil,
R/o.Renukanagar,
Ambajogai Road, Latur
Tq. & Dist. Latur.
2. Uttam s/o Mahadu Hake,
Age: 51 years, Occ: Nil,
R/o. As above.
3. State Bank of Hyderabad
Housing Society, through
its Secretary S.B.H.
Colony, Ambajogai Road,
Latur. ..RESPONDENTS

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Mr V.D. Gunale, Advocate for applicants/appellants;
Mr C.R. Deshpande, Advocate for respondent No.3

CORAM : NITIN W. SAMBRE, J.

DATE : 3rd NOVEMBER, 2017

ORAL ORDER :

In view of no objection, delay stands condoned. Civil Application No. 11947 of 2015 stands allowed.

2. The second appeal is by objector to the execution of the decree for injunction, declaration of ownership passed in Regular Civil Suit No.638 of 2002 preferred under Order 21 Rule 97 of the Code of Civil Procedure.

3. Present appellants claim to be sons, daughters and wife of original defendant No.1- Judgment Debtor. According to them, by virtue of oral partition, the suit property stood transferred to the appellants/objectors and as such, the appellant should have been impleaded as party

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defendants to the suit. In their absence, the suit was partly decreed. The decree, in question, cannot be executed against them as it is not binding. It is claimed that the property was orally mutated/transferred to the appellant in view of matrimonial dispute between the appellant and defendant Nos. 1 and 2. However, the fact remains that the appellant and original defendant Nos. 1 and 2 are residing together.

4. While drawing support from the judgment of Apex Court in the matter of **Ashan Devi and another vs Phulwasi Devi and others**, reported in (2003) 12 SCC 219 and **Maya Devi vs Lalta Prasad**, reported in (2015) 5 SCC 588, learned Counsel for the appellants tried to prevail upon this Court by relying upon the provisions of Order 21 Rule 97, 99 of the Code of Civil Procedure and Sections 54 and 59 of the Transfer of Property Act, to canvass that the decree cannot be executed against the appellants. According to him, substantial question of law is involved in the present appeal.

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5. The claim is opposed by Decree-holder on the ground that the present appellants are trying to frustrate the claim of the respondent-decree holder as original defendant Nos. 1 and 2 never defended the suit and the suit came to be decided exparte against them way back in 2005. According to respondent-decree holder, the appellants are successfully prolonging the decree without any lawful authority.

6. Considered rival submissions. Admittedly, there is decree against the husband and mother in law of appellant No.5 and father and grand mother of remaining appellants passed by 3rd Joint Civil Judge, Junior Division, Latur in Regular Civil Suit No.638 of 2002 on 27th July, 2005. For last 12 years, said decree is not executed for want of one or other reason.

7. The appellants, who belong to Hindu religion, come out with the case of oral gift/share

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by original defendant in their favour. The fact remains that Executing Court, while considering objection has noted that but for oral words of the appellants, there is hardly any material on record to infer that the suit property stood vested in the appellants by virtue of gift or otherwise.

8. Apart from above, the fact remains that considering the age of appellant Nos. 1 to 4, plea that property was gifted in their favour raises serious doubt.

9. The fact remains that appellant Nos. 1 to 4 and 5 are respectively children and wife of defendant No.1 and are residing jointly with original defendant. In the wake of above, plea as is sought to be raised while objecting the decree under Order 21 Rule 97 of the Code of Civil Procedure, in my opinion, is purely with intention to frustrate the object of the decree.

10. No doubt, the decree cannot be executed

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against stranger as is held in law as laid down by the Apex Court in both the judgments cited by the appellants. However, in the factual matrix as is directed herein above, law laid down by the Apex Court will be of hardly any applicability or assistance to the appellants.

11. In my opinion, the Executing Court has rightly rejected objection raised by the appellants.

12. No case for interference is warranted at the behest of the appellants in the second appeal. As such, second appeal fails and stands dismissed.

13. Consequently, civil application for stay stands dismissed.

(NITIN W. SAMBRE, J.)